REMARKS/ARGUMENTS

Claims 1-68 are pending in the present application.

This Amendment is in response to the Office Action mailed November 17, 2004. In the Office Action, the Examiner rejected (1) claims 5, 6, 13, 23, 22, 23, 30, 39, 40, 47, 56, 57, 64 under 35 U.S.C. §112, and (2) claims 1-68 under 35 U.S.C. §103(a). Reconsideration in light of the remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 5, 6, 13, 23, 22, 23, 30, 39, 40, 47, 56, 57, and 64 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner states that there is insufficient antecedent basis for the limitation "the hierarchical level" in claims 5, 13, 22, 30, 39, 47, 56, and 64 because "one of a single peer group and a hierarchical level" does not necessarily give antecedent basis for the hierarchical level when being of a single peer group in the network (Office Action, page 1, item 2). The Examiner further states that there is insufficient antecedent basis for the limitation "the hierarchical network" in claims 6, 23, 40, and 57 because "one of a single peer group and a hierarchical network" does not necessarily give antecedent basis for the hierarchical network when being of a single peer group in the network (Office Action, page 1, item 2). Applicants respectfully disagree.

The lack of antecedent basis may be used in a 35 U.S.C. §112, second paragraph, rejection when a claim contains words or phrases whose meaning is unclear. MPEP 2173.05(e). Here, the phrases "the hierarchical level" and "the hierarchical network" clearly refer to an earlier recitation "one of a single peer group and a hierarchical level" and "one of a single peer group and a hierarchical network", respectively. The Examiner argument that this does not necessarily give antecedent basis when the node is in a single peer group is erroneous for the following reasons.

First, the requirement of an antecedent basis for a word or phrase is to provide clarity and certainty as to what element the limitation is making reference. MPEP 2173.05(c). Here, there is

no lack of clarity or uncertainty regarding which "hierarchical level" or "hierarchical network" that the phrases are making reference.

Second, the limitation that "a node in one of a single peer group and a hierarchical level" indicates that the node may be either in a single peer group or in a hierarchical level. Even if the node is in the single peer group, it is still clear that the hierarchical level/network refers to the earlier recited limitation. Apparently, the Examiner seems to argue that if the node is in the single peer group, then there would be no hierarchical level, and therefore any later reference to the hierarchical level would be indefinite due to this absence of the hierarchical level. This argument is absurd. The claim language is semantically static, not dynamic. A word or phrase in one branch does not automatically disappear if the logic of the language branches to another branch. Furthermore, even if the branch logic of the Examiner's argument is allowed, it would not render the claim indefinite for lack of antecedent basis. This is because when the node is in the single peer group, it would not be in a hierarchical level, and therefore, any subsequent reference of the hierarchical level for the node would not be applicable.

Third, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992). MPEP 2173.05(e). Here, the scope of the hierarchical level and hierarchical network is definite and there is no uncertainty of which hierarchical level or network the phrases are referring to. The Examiner has not produced evidence to show why those skilled in the art would not be able to reasonably ascertain the scope of these elements.

Accordingly, Applicants respectfully request that the rejections of claims 5, 6, 13, 23, 22, 23, 30, 39, 40, 47, 56, 57, and 64 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-51 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,090,011 issued to Fukuta et al. ("Fukuta") in view of U.S. Patent No. 6,563,809 issued to Proctor et al. ("Proctor"), and U.S. Patent No. 6,560,654 issued to Fedyk et al ("Fedyk"). Applicants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a prima facie case of obviousness. To establish

a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-129 (8th Ed., Rev. 2, May 2004).* Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

1. Rejections of Claims 1-7, 10-15, 18-24, 27-32, 35-41, 44-49, 52-58, and 61-66:

The Examiner rejected claims 1-7, 10-15, 18-24, 27-32, 35-41, 44-49, 52-58, and 61-66 under 35 U.S.C. §103(a) as being unpatentable over Fukuta in view of Proctor. Applicants respectfully traverse the rejections for the following reasons.

Fukuta discloses a packet congestion control method and packet switching equipment. When a congestion occurs, a congestion indicator is added to a packet destined for the congested output line and the resultant packet is switched to be sent out to the transmission source of the packet (Fukuta, col. 4, lines 55-62). In other words, the congested indicator is simply returned back to source of the packet. It is not advertised or broadcast to other nodes in the network.

Proctor discloses a subscriber-controlled registration technique in a CDMA communication system. The communication system includes a plurality of base stations. The base stations communicate with a plurality of mobile stations (Proctor, col. 2, lines 24-29). The communication protocol includes a congestion indicator signal that identifies whether the base station is operating in a congested state. The congestion indicator field may simply include a flag signal (Proctor, col. 2, lines 59-67). When the base station is operating in a congested state, the flag signal may indicate that the mobile station should not attempt to register with the base station (Proctor, col. 3, lines 1-4).

Fukuta and Proctor, taken alone or in any combination, does not disclose, suggest, or render obvious (1) determining a congestion status associated with a node in one of a single peer group and a hierarchical level, (2) broadcasting the congestion status to at least one other node in the one of the single peer group and the hierarchical level, (3) receiving a congestion status associated with a node in one of a single peer group and a hierarchical level in the network, the

congestion status corresponding to a measured node condition at the node and being broadcast by the node to at least one other node, and (4) routing a call to the node based on the received congestion status. There is no motivation to combine Fukuta and Proctor because neither of them addresses the problem of managing congestion. There is no teaching or suggestion that one, of a single peer group and a hierarchical level is present. Fukuta, read as a whole, does not suggest the desirability of broadcasting congestion status to one other node.

Fukuta merely discloses returning a congestion indicator to the transmission source of the packet. Furthermore, since Fukuta explicitly discloses returning a congestion indicator to the transmission source, Fukuta does not suggest broadcasting to one other node. Furthermore, neither Fukuta nor Proctor discloses a node in one of a single peer group and a hierarchical level. Fukuta merely discloses terminals communicating with each other via packet switches (Fukuta, col. 9, lines 11-13). Since these terminals are connected directly at the same level, they cannot correspond to a level in a hierarchical system. Similarly, Proctor merely discloses a plurality of base stations communicating with a plurality of mobile stations (Proctor, col. 2, lines 23-29; Figure 1). The mobile stations communicate with the base station at the same level, not a hierarchical level. Furthermore, Proctor does not disclose (1) the congestion status corresponding to a measured condition at the node as recited in independent claims 10, 27, 44, and 61, and (2) measuring a node condition at the node as recited in dependent claims 2, 19, 36, and 53. Proctor merely discloses setting a flag signal to indicate if the base station is in a congested state (Proctor, col. 2, lines 60-62). There is no measured condition at the node.

For the similar reasons, dependent claims 2-9, 11-17, 19-26, 28-34, 36-43, 45-51, 53-60, and 62-68 which depend on independent claims 1, 10, 18, 27, 25, 44, 52, and 61 respectively are distinguishable from the cited prior art references.

2. Rejections of Claims 8-9, 16-17, 25-26, 33-34, 42-43, 50-51, 59-60, and 67-68:

The Examiner rejected claims 8-9, 16-17, 25-26, 33-34, 42-43, 50-51, 59-60, and 67-68 under 35 U.S.C. §103(a) as being unpatentable over Fukuta in view of Proctor, and further in view of Fedyk. Applicants respectfully traverse the rejections for the following reasons.

Fukuta and Proctor are discussed above.

Fedyk discloses an apparatus and method of maintaining timely topology data within a link state routing network. A link state routing network utilizes broadcast advertisements to

notify network devices of bandwidth allocation in the link state network (Fedyk, col. 2, lines 42-43). Fedyk merely discloses link state routing networks utilizing Private Network Network Interface (PNNI) protocol, but not broadcasting a congestion status to at least one other node in one of the single peer group and the hierarchical level. Fedyk discloses using broadcast advertisements to notify network devices of bandwidth allocation, not a congestion status. Fedyk does not disclose determining a congestion status. Fedyk merely discloses using a link state advertisement (LSA) to synchronize the source node with other nodes (Fedyk, col. 5, lines 62-67). The LSA is not a congestion status. Furthermore, as discussed above, Fukuta and Proctor, taken alone or in combination, do not disclose, suggest, or render obvious at least (1) determining a congestion status associated with a node in one of a single peer group and a hierarchical level, (2) broadcasting the congestion status to at least one other node in the one of the single peer group and the hierarchical level. Therefore, the combination of Fukuta, Proctor, and Fedyk does not disclose, suggest, or render obvious at least (1) determining a congestion status associated with a PNNI node, and (2) broadcasting the congestion status to at least one other node using a transit flag being one of a PNNI topology state parameter.

Therefore, Applicants believe that independent claims 1, 10, 18, 27, 35, 44, 52, 61 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejection 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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